

EXHIBIT 33

RECEIVED 12/10/18

BEFORE THE HEARING EXAMINER
OF THE CITY OF OLYMPIA

In the matter of:

MOTION TO CONTINUE HEARING


PROJECT NAME: Wellington Heights
PROJECT NUMBER: 18-1315
HEARING DATE: December 10, 2018

PLEASE TAKE NOTICE that Mauri Shuler, by and through her attorney Allen T. Miller, and the Law Offices of Allen T. Miller, PLLC, respectfully requests that the public hearing for the Wellington Heights project be continued and that the project's Mitigated Determination of Non-Significance (MDNS) be returned to the City's SEPA Officer for issuance of a revised SEPA determination.

The Notice of Public Hearing specifically states that if conditions are deleted, a revised MDNS will be issued.

This Motion is supported by the Declaration of Mauri Shuler and attached exhibits.

DATED this 10th day of December, 2018.



ALLEN T. MILLER, WSBA #12936
Law Offices of Allen T. Miller, PLLC
Attorney for Mauri Shuler

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE HEARING EXAMINER
OF THE CITY OF OLYMPIA

In the matter of:

PROJECT NAME: Wellington Heights
PROJECT NUMBER: 18-1315
HEARING DATE: December 10, 2018

DECLARATION OF MAURI SHULER
IN SUPPORT OF MOTION TO
CONTINUE HEARING

I, Mauri Shuler, hereby declare under the penalty of perjury of the laws of the state of Washington, that the following is true and correct:

1. I own property located at 1532 Fern Street SW, Olympia, Washington 98502, next door to the Wellington Heights project.

2. On October 26, 2018, the City issued a Mitigated Determination of Non-Significance (MDNS) that included a condition Number 3 regarding Stormwater. The MDNS states:

Specifically, as mitigation for off-site stormwater impacts, the applicant shall do the following:

....

- Restore the existing off-site stormwater swale that runs along the northern boundary of the Bruce Titus property as originally designed for the Evergreen Chrysler site in 1987. This swale will continue to convey any groundwater seepage from the embankment, and divert floodwater.
- Restore the screening buffer along the north boundary of the Titus property as identified on the original plat for the auto mall (Olympic Park Replat, Division One.)

(Attached as Exhibit 1 is a true and correct copy of the Notice of Public Hearing and State Environmental Policy Act Mitigated Determination of Non-Significance.)

DECLARATION OF MAURI SHULER IN
SUPPORT OF MOTION TO CONTINUE
HEARING - 1



ORIGINAL

The Law Offices of Allen T. Miller, PLLC
1801 West Bay Drive NW #205
Olympia, WA 98502
(360) 754-9156

1 3. On December 6, 2018, Jeff Fant wrote a letter indicating that these two conditions of the
2 MDNS were being withdrawn. (See Exhibit 2 attached.) These conditions are essential to protect my
3 property from the consequences of the Wellington Heights project. I would have appealed the MDNS if
4 these conditions had not been included.

5 4. On December 7, 2018, Bruce Titus sent a letter asking that the public hearing be postponed
6 because of the withdrawal of the conditions. (See Exhibit 3 attached.)

7 5. On December 8, 2018, Deputy Mayor Nathaniel Jones sent a letter indicating that the
8 hearing will be continued. (See Exhibit 4 attached.)

9 6. The public hearing is currently scheduled for Monday, December 10, 2018 at 6:00 p.m. I
10 request a continuance of this hearing in order to return the project's Mitigated Determination of Non-
11 Significance (MDNS) to the City's SEPA's Officer for reconsideration.

12 7. The hearing needs to be continued in order to allow for a new threshold determination by
13 the City's Environmental Officer.

14 SIGNED AND DATED this 10th day of December, 2018, at Olympia, WA.

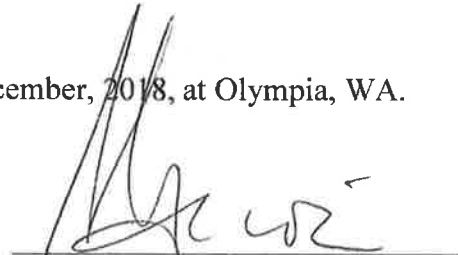
15
16 
17 MAURI SHULER

EXHIBIT 1



**NOTICE OF PUBLIC HEARING AND
STATE ENVIRONMENTAL POLICY ACT
MITIGATED DETERMINATION OF
NONSIGNIFICANCE
(SEPA MDNS)**

Community Planning & Development
601 4th Avenue E. – PO Box 1967
Olympia WA 98501-1967
Phone: 360.753.8314
Fax: 360.753.8087
cpdinfo@ci.olympia.wa.us
www.olympiawa.gov

Project Name: Wellington Heights

Project Number: 18-1315

Description of Proposal: Subdivide a 9.4 acre parcel into 56 residential lots with street connections being made to existing streets (Fern Street, Division Street and Cushing Street), Utilities, Stormwater Tracts and Soil and Vegetation Protection Areas

Location of Proposal: 2000 BLK 18TH Avenue SW

Proponent: ABS Investments
PO Box 6130
Olympia WA 98507

Representative: Olympic Engineering

Lead Agency: City of Olympia, Community Planning and Development

SEPA Official: Cari Hornbein, Senior Planner
Phone: 360.753.8048; Email: chornbei@ci.olympia.wa.us

Lead Planner: Paula Smith, Associate Planner
Phone; 360.753.8596; Email: psmith@ci.olympia.wa.us

Date of Issue: October 26, 2018

Comment Deadline: 5:00 P.M. November 9, 2018

Appeal Deadline: 5:00 P.M. November 16, 2018

Hearing Date: December 10, 2018, 6:00 P.M.

Hearing Location: Olympia City Hall, Council Chambers, 601 4th Avenue E

NOTICE OF PUBLIC HEARING: The City of Olympia Hearing Examiner will hold a public hearing to receive public comments prior to making a decision on the proposed project. Anyone interested is invited to attend and present testimony regarding the above proposal. Written statements may be submitted to the lead planner via email listed above or by standard mail. The mailing address is: Olympia Community Planning and Development Department, PO Box 1967, Olympia, WA 98507-1967. Written comments must be received at or prior to the public hearing.

If you require special accommodations to attend and/or participate in this hearing, please contact Community Planning and Development by 10:00 a.m., 48 hours in advance of the meeting or earlier, if possible; phone: 360.753.8314; e-mail: cpdinfo@ci.olympia.wa.us. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1-800-833-6384.

The City of Olympia is committed to the non-discriminatory treatment of all persons in the delivery of services and resources.

SEPA MDNS

THRESHOLD DETERMINATION: The lead agency for this proposal has determined with the mitigation listed below; this action probably will **not** have a significant adverse impact upon the environment. Therefore an Environmental Impact Statement is **not** required under RCW 43.21C.030(2)(C). The environmental review and SEPA threshold determination of this proposed action are based upon the following:

- 1) Preliminary Plat Map (Sheet 1 of 5) date-stamped received 10/02/18,
- 2) Preliminary Erosion Control and Drainage Plan Amendment (Sheet 1 of 1) date-stamped received 10/18/2018,
- 3) Preliminary Drainage Report date-stamped received 08/17/2018
- 4) Traffic Impact Analysis date-stamped received 08/17/2018
- 5) Environmental Checklist date-stamped received 08/17/2018 and a
- 6) Soils and Vegetation Plan date-stamped received 3/30/2018

This information is available to the public on request.

This MDNS is **not** a permit. The City of Olympia will not act upon and no permits will be issued for this proposal prior to the appeal deadline.

This MDNS is issued under Washington Administrative Code 197-11-350. The applicant shall not begin work until after the appeal deadline has expired and any other necessary permits have been granted.

This determination is based on a presumption that this project will include all mitigation measures proposed to be implemented by the applicant and will conform to all applicable standards and regulations. Should any mitigation measure be removed by the applicant, be infeasible, or be held to be invalid or unconstitutional, a new threshold determination may be required. Among other standards, this project is subject to and must conform to the Olympia Municipal Code (OMC), the Engineering Design and Development Standards (EDDS), and the State Environmental Policy Act (SEPA).

In addition, this project shall conform to and, unless expressly stated otherwise, any subsequent permits shall automatically incorporate with or without reference to the condition set forth below.

COMMENTS: Comments regarding this Mitigated Determination of Non-Significance (MDNS) should be directed to the SEPA Official at the address above. If conditions are added, deleted or modified during or following the 14-day comment period, a revised MDNS will be issued.

COMMENT DEADLINE: 5:00 p.m., NOVEMBER 9, 2018

APPEAL PROCEDURE: Pursuant to RCW 43.21C.075 (3) and Olympia Municipal Code 14.04.160(A), the conditions (mitigating measures), or lack thereof, in an MDNS may be appealed by any agency or aggrieved person. Appeals must be filed with the Community Planning and Development Department at the address above within twenty-one (21) calendar days of the date of issue. Any appeal must be accompanied by an Appeal of an Administrative Decision Form and a \$1,000.00 administrative appeal fee.

APPEAL DEADLINE: 5:00 p.m., NOVEMBER 16, 2018

SEPA-BASED CONDITIONS and MITIGATING MEASURES:

1. Fern Street is functionally classified as a neighborhood collector with traffic volumes typically ranging from 500 to 3,000 vehicles per day (EDDS, Chapter 4, Tables 2 and 3). Current levels of traffic just south of 9th Avenue exceed this range (4,000 vehicles per day). The proposed project is anticipated to increase daily trips on Fern Street by 426 trips, but will not exceed intersection and corridor levels of service in the area. Since this will intensify and increase traffic volumes on Fern Street, the applicant will be required to install three traffic calming devices between 14th Avenue and 9th Avenue in accordance with the Standards, Section 4B.210 Traffic Calming Devices. These devices will help slow traffic on Fern Street and thereby enhance safety, but will also help disperse project-generated traffic to Decatur Street, which has less traffic. The applicant will be required to participate in the City's Neighborhood Traffic Management Program to identify the type and location of traffic calming devices. *Comprehensive Plan Goals and Policies: GT9, PT9.1, and PT9.2; Engineering Design Development Standards (EDDS): 4B Streets, 4B.010 General Standards, and 4B.210 Traffic Calming Devices.*
2. The July 2018 Traffic Impact Analysis indicates the lack of intersection control at Fern Street and 15th Avenue, which has a traffic-calming circle with no traffic control signage. With the anticipated increase of traffic on Fern Street, the applicant will be required to install yield signs on each approach leg to increase intersection safety and functionality. *Comprehensive Plan Goals and Policies: GT9, PT9.1, and PT9.2; Engineering Design Development Standards (EDDS): 4B Streets, 4B.010 General Standards, and 4B.210 Traffic Calming Devices.*
3. Stormwater generated by the proposed project will be infiltrated on-site; however, it is anticipated that during some very high intensity stormwater events, excess stormwater will need to be conveyed off-site into an existing downstream drainage course that consists of a drainage swale at the base of the embankment and along the west property line of the adjoining property (Bruce Titus dealership). The embankment also seeps water that drains into the swale. As it currently exists, the

downstream stormwater conveyance system is degraded and cannot handle such excess stormwater flows from the proposed project.

In addition, stormwater from the Wellington West development to the north is conveyed through the subject property into the existing drainage system noted above. During high stormwater events, flows flood the parking lot of the dealership.

The applicant is required to convey existing stormwater drainage from Wellington West and other developments to the north, which flow into the Wellington West storm pond. This will require offsite improvements on the dealership property.

Therefore, to mitigate off-site stormwater impacts, the applicant shall develop a conveyance system that can handle the 100-year design storm, convey the existing pass-through flows from the Wellington West storm ponds, provide an emergency overflow route for the proposed on-site infiltration system, and protect the downstream property owners from stormwater impacts.

Specifically, as mitigation for off-site stormwater impacts, the applicant shall do the following:

- Develop a safe and dependable on-site conveyance system that delivers stormwater from the Wellington Heights property to the northwest corner of the Bruce Titus property.
- Improve the existing off-site conveyance ditch from the northwest corner of the Bruce Titus property south to an existing 42" culvert under the west entrance to the Bruce Titus site.
- Restore the existing off-site stormwater swale that runs along the northern boundary of the Bruce Titus property as originally designed for the Evergreen Chrysler site in 1987. This swale will continue to convey any groundwater seepage from the embankment, and divert floodwater.
- Restore the screening buffer along the north boundary of the Titus property as identified on the original plat for the auto mall (Olympic Park Replat, Division One)

Comprehensive Plan Goals and Policies: GU10, PU10.1, PU10.3, and PU10.6; Drainage Design and Erosion Control Manual (DDECM): Volume 1, 2.5.4, Core Requirement #4, Supplemental Guideline (c).

Issued by:



CARI HORNBEIN, SEPA OFFICIAL

EXHIBIT 2

From: Jeff Fant [<mailto:jfant@ci.olympia.wa.us>]
Sent: Thursday, December 06, 2018 4:42 PM
To: Bruce Titus
Cc: Tim Smith; Cari Hornbein; Paula Smith; Steve Thompson
Subject: Wellington Heights - Off-Site Stormwater Improvements (Merritt Letter / City Response)

Mr. Titus,

I received the attached letter from Mr. Merritt in response to our Monday meeting.

Staff have reviewed this letter; in conclusion, Staff accept Mr. Merritt's professional conclusion that the *"...requested upgrades to the existing ditch along the northern portion of Mr. Titus' parcel are not warranted..."*.

At this time Staff plan to recommend to the Hearing Examiner that SEPA Condition No.3 be modified by striking mitigation bullet items 3 and 4.

Best regards,

Jeff Fant | Engineering Plans Examiner

City of Olympia Community Planning & Development

P.O. Box 1967 | 601 4th Avenue E | Olympia, WA 98507-1967

Office 360-753-8315 | Cell 360-239-6066

EXHIBIT 3

Bruce Titus <brucet@brucetitus.com>

To: Tim Smith, chornbei@ci.olympia.wa.us, Paula Smith, Steve Thompson, jfant@ci.olympia.wa.us
Dec 7 at 6:18 PM

Dear Mayor Selby and Nathaniel Jones, Mayor Pro Tem,

I am writing to ask that you postpone the Hearing Examiner's public hearing, scheduled for Monday, December 10th on the Alex Vo/Wellington Heights project. This is necessary in order to return the project's Determination of Nonsignificance (DNS) to the the City's SEPA's Officer for reconsideration.

After over a year of discussions with the City staff, I was informed yesterday, December 6th, that a staff member, responding to a December 4th request from the developer, will recommend removal of two mitigating conditions from the project DNS. These conditions are essential to protect my property from the consequences of the Alex Vo/Wellington Heights project.

The DNS for this project was conditioned on the performance of these two (and other) listed mitigations. Removing them renders the DNS invalid. Proposing to do this at the last minute, one business day before the hearing and with no meaningful opportunity for public comment, renders your planning process invalid.

In order to preserve any semblance of substantive or procedural justice in the City's planning process, you must order a postponement of the Hearing Examiner's public hearing to allow for a new threshold statement by the City's Environmental Officer. This will permit businesses like mine and the broader community to review, comment upon and potentially appeal a new SEPA determination.

Sincerely,

Bruce Titus

Bruce Titus, President & CEO
Bruce Titus Automotive www.brucetitus.com
6221 Tacoma Mall Blvd, Tacoma 98409
o. (253) 284-0140 f. (253) 474-0805
e. brucet@brucetitus.com

"Count on Us, All Around the Sound"

EXHIBIT 4

Fwd: Wellington Heights + Olympia Chrysler Jeep

From: Bruce Titus (brucet@brucetitus.com)

To: danleahy43@yahoo.com

Date: Saturday, December 8, 2018, 6:20 PM PST

NATHANIEL JONES

Dan , I just saw this . I'm in EW hunting and will be back in the office Monday ..

Sent from my iPhone

Begin forwarded message:

From: Nathaniel Jones <njones@ci.olympia.wa.us>
Date: December 8, 2018 at 12:40:33 PM PST
To: Bruce Titus <brucet@brucetitus.com>, Tim Smith <tsmith@ci.olympia.wa.us>
Subject: Re: Wellington Heights + Olympia Chrysler Jeep

Mr. Titus,

It now appears that the Hearings Examiner will "continue" the December 10 hearing to provide adequate time for everyone's consideration of the changed stormwater provisions.

This means that the Monday hearing will proceed but an additional hearing will be scheduled for the stormwater elements.

The continuance is at the discretion of the Examiner. However, I believe that the extension is the only rational course.

Please stay tuned.

Best regards,

Nathaniel Jones,
Olympia Mayor Pro Tem

From: Nathaniel Jones <njones@ci.olympia.wa.us>
Sent: Saturday, December 8, 2018 9:58 AM
To: Bruce Titus; Tim Smith
Subject: Re: Wellington Heights + Olympia Chrysler Jeep

Mr. Titus,

Thank you for reaching out to me.
I share your concerns.

I have asked City staff to delay the hearings process to allow all parties to understand and respond to the modifications to the SEPA conditions.

I believe that the current process is flawed and fails to follow the intent of Olympia's development procedures.

I will try to get this fixed.